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Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 July 2016 to 30 June 2017

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2016 to 30 June 2017.

The General Assembly is invited to take note of the report.

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I. Introduction

1. The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour in accordance with the established procedures and regulations. The report covers the period from 1 July 2016 to 30 June 2017.

2. As requested in paragraph 17 of resolution 59/287, an information circular will be issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including legal action, with due regard for the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II so that the information provided in sections III and IV may be understood in context. Section III contains a summary of the cases of established misconduct during the reporting period. Section IV contains comparative data reflecting the disposition of cases completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and information about appeals of disciplinary measures imposed since 1 July 2009. Section IV also provides comparative data on the number and nature of cases referred to the Office of Human Resources Management for action during the reporting period. Section V provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of the administrative machinery with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity".

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values (see, in particular, staff regulation 1.2 and staff rule 1.2).

B. Misconduct

6. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and

[1] Provisions relating to the status, rights and duties of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook (available at https://hr.un.org/handbook) under the categories "Duties, obligations and privileges" and "Administration of justice and disciplinary matters".

may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. The administrative instruction on revised disciplinary measures and procedures (ST/AI/371/Amend.1)[2] provides further examples of conduct for which disciplinary measures may be imposed.

7. A new administrative instruction on investigations and the disciplinary process was discussed at the annual meeting of the Staff-Management Committee, held in April 2016, and sent for broader consultation in June 2016. It remains under internal review at this time.

C. Procedural fairness

8. Where the head of office or other responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and complexity of the report of misconduct, the investigation may have been undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

9. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter and thereby initiates the disciplinary process, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a). The Under-Secretary-General for Management may also decide to impose one or more administrative measures. In some cases, the first step taken with respect to a matter referred to the Office of Human Resources Management is not to initiate the disciplinary process but rather to request the staff member to provide comments. The request for comments is made, inter alia, in compliance with staff rule 10.2 (c) if the issuance of a reprimand is being contemplated and to assist the Office in deciding whether to initiate the disciplinary process.

10. Staff rule 10.4 (a) provides that, at any time after a report of possible misconduct, pending an investigation and until the completion of the disciplinary

[2] See also the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5).

process, a staff member may be placed on administrative leave by the appropriate official.[3]

11. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure in accordance with chapter XI of the Staff Rules.[4]

D. Disciplinary measures

12. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e. more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

13. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. Additionally, in accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board.

[3] In January 2013, the Assistant Secretary-General for Human Resources Management delegated to the Under-Secretary-General for Field Support, on a pilot basis, the authority to place field mission staff members on administrative leave with pay. The delegation of authority on a pilot basis was reconfirmed in September 2014 and remains in place. Guidelines for placement of staff on administrative leave with pay pending investigation and under the disciplinary process can be found in the Human Resources Handbook (https://hr.un.org/handbook), under the category "Administration of justice and disciplinary matters". It is envisaged that the draft administrative instruction on investigations and the disciplinary process (see para. 7 above) will reflect this delegation of authority when promulgated. A management working group is further discussing the delegation of authority to the Under-Secretary-General for Field Support for field staff, as envisaged in annex VII to the report of the Secretary-General on the administration of justice at the United Nations (A/68/346).

[4] Judgments of the United Nations Dispute and Appeals Tribunals relating to disciplinary cases may be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

E. Other measures

14. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands are administrative measures that are important for upholding standards of proper conduct and promoting accountability. Written reprimands are placed in the staff member's official status file. Warnings or letters of caution are managerial measures directed at fostering awareness of the proper standards of conduct. In addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. This may include training, counselling, the non-renewal of a contract or the termination of an appointment.

III. Summary of cases in which disciplinary measures were imposed during the period from 1 July 2016 to 30 June 2017[5]

15. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure or measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed, although statistical information about such cases is provided in section IV below.

16. As noted above, both aggravating and mitigating circumstances may be taken into account in determining a sanction, and these vary according to the unique facts and circumstances of a case. Examples of possible aggravating circumstances are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating circumstances are sincere remorse and the voluntary disclosure of the acts of misconduct early in the process.

17. Not every case brought to the attention of the Secretary-General indicating possible misconduct results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases will also typically be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, unless continuation is in the interest of the Organization. In the vast majority of cases involving former staff members, a record is made and placed in the former staff member's official status file so that the matter may be further considered if and when the staff member rejoins the Organization. In this regard, section 3.9 of the administrative instruction on the administration of fixed-term appointments (ST/AI/2013/1) provides that a former staff member "will be ineligible for re-employment following ... resignation during an investigation of misconduct or institution of a disciplinary process, unless the former staff member agrees to cooperate with an ongoing investigation or disciplinary process until its conclusion". Where relevant, this provision is noted in records placed in official status files.

[5] Information contained in the summaries is correct as at the date of submission of the present report.

18. In paragraph 23 of its resolution 68/252, the General Assembly requested the Secretary-General to take appropriate measures to mitigate and recoup any losses arising from misconduct by staff members and to report thereon. As the summaries of the cases below indicate, in the majority of the cases where there was a quantifiable loss to the Organization, the Organization either recovered the relevant property and/or funds, the staff member repaid the funds at issue or the Under-Secretary-General for Management decided to recover an amount equal to the financial loss. The recovery of financial losses to the Organization is currently being effected under staff rule 10.1 (b), which provides that where conduct is determined by the Secretary-General to constitute misconduct and the Organization has suffered a financial loss as a result of the staff member's actions, which are also determined to be wilful, reckless or grossly negligent, such staff member may be required to reimburse the Organization for such loss in whole or in part. One of the proposed changes to the administrative instruction on investigations and disciplinary matters (see para. 7 above) is to elaborate on the procedure for recovery of losses to the Organization resulting from established misconduct, thereby enhancing the legal framework to effect recovery.

A. Abuse of authority, harassment and discrimination

19. A staff member sexually harassed an individual who had worked for an entity external to the Organization and then joined a United Nations agency, by making unwanted advances and sending improper messages of a sexual nature, and continuing to attempt to contact the individual. There were mitigating circumstances. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

20. A staff member, without authorization, obtained the key and gained entry to the residence occupied by a staff member of another United Nations agency. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: deadline to appeal has not yet expired.

21. A staff member repeatedly touched the breasts of another staff member who was working in a subordinate position in the staff member's office. *Disposition*: a fine of one month's net base salary and separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

22. A staff member masturbated in the presence of employees of a contractor providing cleaning services at the workplace and, in a second case, masturbated in public view. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. Mitigating factors included long service with the Organization in mission settings. The staff member's functions involving security operated as an aggravating factor. *Appeal*: deadline to appeal has not yet expired.

B. Theft and misappropriation

23. Without authorization or reasonable justification, a staff member entered an office in which money was stored through its window, searched and/or attempted to open drawers inside the office, and ignored repeated requests from security staff members to open the office door. *Disposition*: dismissal. *Appeal*: none.

24. A staff member took goods from the United Nations Commissary without paying for them. *Disposition*: separation from service with compensation in lieu of

notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

25. A staff member ordered and received goods using documentation and stamps of the Organization, without authorization to do so, for personal gain. The vast majority of the goods were recovered from a property possessed by the staff member. *Disposition*: dismissal. *Appeal*: none.

26. A staff member attempted to sell property (two laptops) of the Organization without authorization. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

27. A staff member took money from the wallet of a United Nations contractor, without the knowledge or consent of the contractor. The staff member's length of service to the Organization and early admission of the conduct were considered mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

28. A staff member took, without authorization, ceremonial beehives that belong to the Organization. The staff member's long, satisfactory service with the Organization and personal circumstances operated as mitigating factors. The beehives were recovered. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

29. A staff member took, without authorization, fuel belonging to the Organization and sold it to third parties. The fact that the staff member served as a driver was considered an aggravating factor. An amount equivalent to the value of the fuel that was taken without authorization was recovered from the staff member. The staff member's early admission of the misconduct operated as a mitigating factor. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

30. A staff member removed a generator, belonging to the Organization, from United Nations premises without authorization, and used a United Nations vehicle for the unauthorized purpose of removing the generator. There were mitigating and aggravating circumstances. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

C. Misrepresentation and false certification

31. A staff member submitted a birth certificate containing false information in support of an application for dependency benefits. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. An amount approximately equivalent to the benefit received was also to be recovered from the staff member. *Appeal*: none.

32. A staff member submitted three claims for reimbursement for medical expenses to the health insurance scheme provide by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation. The Organization suffered a financial loss as a result of the staff member's actions. There were mitigating circumstances. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. An amount of the loss was also to be recovered. *Appeal*: none.

33. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provide by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation.

The Organization suffered a financial loss as a result of the staff member's actions. The staff member's long service with the Organization and the fact that the staff member ultimately admitted the wrongdoing were considered mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. The amount of the loss was also to be recovered. *Appeal*: none.

34. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provide by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to these claims. There were mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

35. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provide by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to these claims. There were no mitigating or aggravating circumstances. *Disposition*: dismissal. *Appeal*: deadline to appeal has not yet expired.

36. A staff member submitted a claim for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation. The Organization suffered a financial loss as a result of the staff member's actions. There were no mitigating or aggravating circumstances. *Disposition*: dismissal. An amount of the loss was also to be recovered. *Appeal*: deadline to appeal has not yet expired.

37. A staff member submitted a claim for reimbursement for medical expenses to the health insurance scheme provide by the Organization. The claims for reimbursement were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to these claims. There were no mitigating or aggravating circumstances. *Disposition*: dismissal. *Appeal*: deadline to appeal has not yet expired.

38. A staff member submitted to the Organization 43 falsified sick leave certificates and at least eight claims for reimbursement for medical expenses that included falsified invoices and medical documentation. The Organization suffered a financial loss as a result of the staff member's actions. There were aggravating and mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity, together with a fine of one month's net base salary. The financial loss was also to be recovered. *Appeal*: deadline to appeal has not yet expired.

39. A staff member made a false declaration on the staff member's United Nations personal history profile by stating that the staff member had worked at a specified security company when the staff member had, in fact, never been an employee of that company. The fact that the staff member colluded with other persons to falsify documentation submitted to the Organization regarding the staff member's previous employment was considered an aggravating factor and the facts that the staff member admitted the wrongdoing and showed sincere remorse were considered mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

40. A staff member submitted to the Organization several dependency benefits questionnaires that did not truthfully reflect the staff member's marital status. There were mitigating circumstances. *Disposition*: separation from service, with

compensation in lieu of notice and with termination indemnity. The financial loss was also to be recovered. *Appeal*: none.

41. A staff member submitted to the Organization several dependency benefits questionnaires that did not truthfully reflect the staff member's marital status. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. The financial loss was also to be recovered. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

42. A staff member submitted dental insurance claims that contained false information. There were mitigating factors, including an early admission to the misconduct. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. The financial loss was also to be recovered. *Appeal*: none.

D. Inappropriate or disruptive behaviour

43. A staff member used insulting and racially charged language towards a non-United Nations person while using an official United Nations vehicle. *Disposition*: written censure. *Appeal*: deadline to appeal has not yet expired.

44. A staff member refused to comply with the instruction to report for training aimed at addressing performance issues. The staff member's status as a security officer acted as an aggravating factor. *Disposition*: written censure. *Appeal*: none.

45. A staff member engaged in disruptive behaviour at a local bar and, after having consumed alcohol, drove a United Nations vehicle in a manner that was dangerous to the public and without reasonable care, and failed to stop when instructed to do so by security officers. Mitigating factors included the staff member's early admission. The facts that the staff member served as a security officer and had received a previous sanction for disorderly conduct operated as aggravating factors. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: deadline to appeal has not yet expired.

E. Unauthorized outside activities and conflict of interest

46. Without the approval of the Secretary-General, a staff member engaged in outside activities by editing and reviewing documents for a private consulting firm managed by another staff member, and failed to report the other staff member's possible misconduct. There were mitigating circumstances. *Disposition*: loss of two steps in grade together with a written censure. *Appeal*: none.

47. A staff member who had been employed by a national Government prior to joining the United Nations remained so employed more than three years after the staff member joined the Organization. *Disposition*: written censure, loss of one step in grade and a fine equivalent to three months' net base salary. *Appeal*: none.

48. A staff member provided translation/interpretation services for one or more non-United Nations organizations on one or more occasions while employed by the United Nations and without the authorization of the Secretary-General. *Disposition*: written censure, loss of two steps in grade, and a fine equivalent to three months' net base salary. *Appeal*: none.

49. A staff member conducted business and participated in the affairs of an outside entity that had a contractual relationship with the Organization, without authorization, and failed to disclose the staff member's relationship with the outside entity while participating in the decision-making process to issue a contract to the

outside entity. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

F. Assault and abusive conduct

50. A staff member performing security functions made an aggressive physical gesture during an argument with a supervisor. The staff member had previously been disciplined for using excessive force during a security response to an incident. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

51. A staff member attempted to strike another staff member during a physical altercation that followed a verbal dispute. The conduct was mitigated by the fact that it was the other staff member who initiated the physical altercation. *Disposition*: demotion of one grade with deferment, for three years, of eligibility for consideration for promotion. *Appeal*: none.

52. A staff member attempted to strike another staff member during a physical altercation that followed a verbal dispute. The conduct was aggravated by the fact that the staff member had previously engaged in a physical altercation at work. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

53. In connection with a series of staff protests, a staff member published information about staff members who did not participate in the protest. The conduct was mitigated by the fact that the staff member deleted the publication the same day and published a retraction the following day. *Disposition*: censure and loss of two steps in grade. *Appeal*: none.

54. A staff member physically assaulted the staff member's domestic partner, and threatened the partner and a colleague by pointing the staff member's service firearm at them. *Disposition*: dismissal. *Appeal*: none.

55. A staff member physically assaulted another staff member. The fact that the staff member was provoked was considered to be a mitigating factor. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

56. A staff member verbally abused, threatened and physically assaulted other staff members. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

57. A staff member who was a security officer slapped an employee of a contractor providing security services to the Organization. The staff member had a supervisory role in relation to the contractor. There were mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

G. Failure to honour private obligations

58. A staff member obtained a loan from one or more staff members of the Organization and delayed in repaying and/or did not fully repay the amount borrowed. *Disposition*: written censure and loss of three steps in grade. The staff member was also directed to repay the amount borrowed in full. *Appeal*: deadline to appeal has not yet expired.

59. A staff member failed to abide by instructions that were issued on behalf of the Secretary-General in connection with a previously sanctioned outstanding private legal obligation. There were aggravating factors. *Disposition*: demotion of one grade with deferment, for two years, of eligibility for consideration for promotion. *Appeal*: deadline to appeal has not yet expired.

H. Sexual exploitation and abuse

60. A staff member engaged in the sexual exploitation and abuse of a minor. *Disposition*: dismissal. *Appeal*: none.

61. A staff member engaged in a sexual relations with a beneficiary of United Nations assistance and paid the beneficiary of assistance in connection with those sexual relations. Mitigating factors included the staff member's early admission to the facts underlying the misconduct. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity, together with a fine equivalent to one month's net base salary. *Appeal*: deadline to appeal has not yet expired.

I. Misuse of United Nations property and assets

62. A staff member failed to return to the Organization an unused portion of a cash advance. The staff member's length of service to the Organization was found to constitute a mitigating factor. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. The loss was also to be recovered. *Appeal*: none.

63. In connection with an accident that occurred while a staff member was driving a United Nations vehicle, the staff member did not properly report the accident. *Disposition*: written censure, loss of one step in grade, and a fine equivalent to one month's net base salary. The staff member was also required to reimburse the Organization for the assessed value of the damage to the vehicle. *Appeal*: none.

64. A staff member drove a United Nations vehicle while under the influence of alcohol. There were mitigating circumstances, including long service. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

65. A staff member used a United Nations vehicle for personal gain. The staff member's early admission was considered a mitigating factor. The fact that the staff member derived a financial benefit from the misuse of the United Nations vehicle operated as an aggravating factor. *Disposition*: written censure, together with a loss of three steps in grade, with deferment, for a period of one year, of eligibility for salary increment, and a fine of one month's net base salary. *Appeal*: none.

J. Misuse of office

66. A staff member with human resources functions solicited payment from a United Nations job applicant in connection with the latter's recruitment. *Disposition*: dismissal. *Appeal*: none.

67. A staff member offered to assist a person external to the Organization with securing United Nations employment and accepted payments from the external person. The staff member's early admission of the conduct constituted a mitigating

factor. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity, and a fine of one month's net base salary. *Appeal*: none.

68. A staff member improperly used the staff member's position with the Organization for financial gain and solicited and/or accepted payments from one or more contractors with the Organization. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

K. Other

69. A staff member failed to report another staff member's breach of staff rules and regulations despite knowledge thereof. *Disposition*: written censure. *Appeal*: none.

70. A staff member in a subordinate position assisted another staff member in cheating on two written assessments in the course of official recruitment exercises. The fact that the staff member derived no personal benefit was considered a mitigating factor. *Disposition*: demotion by one grade with deferment, for two years, of eligibility for consideration for promotion. *Appeal*: none.

71. A senior staff member cheated on two written assessments in the course of official recruitment exercises and solicited the assistance of another staff member to do so. The fact that the staff member served at the management level with oversight responsibilities over matters that included human resources was considered an aggravating factor. The staff member's long service and prompt admission constituted mitigating factors. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

72. A staff member, serving in the capacity as a security team leader, instructed the staff member's team members not to report possible misconduct by another team member and failed to report the possible misconduct to a more senior staff member. *Disposition*: deferment, for a period of two years, for eligibility for consideration for promotion, together with written censure. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

73. A staff member was found to have created documentation regarding the staff member's employment with the Organization that was misleading. The staff member's early admission constituted a mitigating factor. *Disposition*: written censure. *Appeal*: none.

IV. Data on cases received and completed during the reporting period

A. Cases completed during the reporting period

74. The tables in the present section provide information on the number and disposition of cases completed during the reporting period, including those which did not result in the imposition of a disciplinary measure. Information is also provided about appeals to the Dispute and Appeals Tribunals of disciplinary measures imposed since 1 July 2009.

75. Generally, the length of time for completion of the disciplinary process varies depending on the complexity of the matter, the quantity and quality of evidence contained in the referral, and any clarifications or any further information that may be required following review by the Office of Human Resources Management. As previously reported, the jurisprudence from the Dispute and Appeals Tribunals with

regard to the standard of proof and additional requirements concerning the reliability of witness statements continues to add to the level of review required by the Office of Human Resources Management and require that additional evidence be gathered by investigating entities where appropriate.[6]

76. The time taken to process a case also includes the time needed for the staff member concerned to respond to the allegations of misconduct and any further relevant information received by the Office of Human Resources Management during the disciplinary process, which can be lengthy given that the staff member may request extensions in order to consult counsel. After a response is received from a staff member, it is often necessary to seek further clarifications and/or evidence from the investigating entity and to then again obtain the staff member's comments on the additional information received.[7] Requests from staff members and the Office of Staff Legal Assistance for extensions of time to respond to communications from the Office of Human Resources Management also account for additional time being taken to complete cases.

77. Tables 1 and 2 reflect cases completed during the reporting period that were referred to the Office of Human Resources Management both prior to and during the reporting period. The average time taken during the reporting period to dispose of cases after their referral to the Office was 7.7 months, which is a slight decrease, relative to the previous period (8.6 months).

Table 1
Disposition of cases completed between 1 July 2016 and 30 June 2017

Disposition	*Number*
Dismissal	8
Separation from service, with notice or compensation in lieu of notice and with or without termination indemnity	32
Other disciplinary measures	15
Administrative measures	10
Closed with no measure	8
Not pursued as a disciplinary matter	16
Separation of the staff member prior to or after referral of the case to the Office of Human Resources Management prior to the completion of a disciplinary process	40
Other	3
Total	**132**[a]

[a] Although there were 132 dispositions, these dispositions closed 136 cases. The separation from service/dismissal of two staff members closed two and three cases per staff member, respectively, for a total of five cases. An administrative measure imposed on one staff member closed two cases.

[6] In particular, the decision of the Appeals Tribunal in *Molari* (2011-UNAT-164), which provided that the standard of proof in disciplinary cases that could result in a termination is "clear and convincing evidence", has often resulted in the need for the Office of Human Resources Management to request further input from investigating entities after the initial referral of the matter. It is also noted that in the Dispute Tribunal judgment in *Applicant* (UNDT/2013/086), the "clear and convincing" standard of proof was also applied to the analysis of the evidence in a challenge to a sanction of demotion. Furthermore, additional formal requirements were required by the Appeals Tribunal with respect to witness statements (*Nyambuza*).

[7] The requirement that additional information be provided to the staff member for comment was confirmed by the Dispute and Appeals Tribunals in *Israbhakdi* (UNDT/2012/010 and 2012-UNAT-277).

78. Sixteen out of 136 cases completed during the reporting period, or 12 per cent of the cases completed, were not pursued as disciplinary matters. In the four prior reporting periods, ending 30 June 2013, 2014, 2015 and 2016, the corresponding percentages were 27 per cent, 20 per cent, 15 per cent and 8 per cent, respectively. The reason for a given case not being pursued as a disciplinary matter is specific to the facts and circumstances of the case. It is thought that the greater awareness by investigating entities of the *Molari* judgment (2011-UNAT-164), which provided that facts supporting a disciplinary measure that could result in termination must be established by clear and convincing evidence, has led to investigations being more thorough and investigating entities being more responsive to requests for further supporting information from the Office of Human Resources Management. This, in turn, has led to an overall trend of more cases being pursued as disciplinary matters, in comparison with the period immediately following the introduction of the new system of justice.

Table 2
Cases completed in the current and past four reporting periods

Period	*Number*
1 July 2016 to 30 June 2017	136
1 July 2015 to 30 June 2016	143
1 July 2014 to 30 June 2015	148
1 July 2013 to 30 June 2014	115
1 July 2012 to 30 June 2013	115

79. Although a slight decrease in the number of cases completed is observed relative to the previous reporting period, the number of cases completed remains above the average number of cases completed in the past four reporting periods.[8] During the present reporting period, 55 disciplinary measures were imposed.[9] In the four prior reporting periods, ending 30 June 2016, 2015, 2014 and 2013, 67 disciplinary measures, 64 disciplinary measures, 39 disciplinary measures and 43 disciplinary measures were imposed, respectively. Although a slight decrease in the number of disciplinary sanctions imposed is observed relative to the past two reporting periods, the number of disciplinary measures imposed remains in line with the average number of disciplinary measures imposed in the past four reporting periods.[10]

80. With regard to the workload of the Office of Human Resources Management, it may be recalled that, in addition to its role in acting on cases referred for possible disciplinary action, the Office also has a role under the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5) in connection with cases involving complaints against the most senior-level staff. In this regard, the Office provides recommendations on whether to initiate an investigation and, where relevant, reviews the completed investigation report and provides reasoned, written outcomes to complainants and alleged offenders. In addition, the Office routinely provides advice to other offices on the handling of complaints under that bulletin. Given the complexity and sensitivity of such cases, the Office's involvement in these matters tends to be exceptionally resource intensive.

[8] The average number of cases completed in the past four reporting periods is 130.25.
[9] This number reflects closures of 58 cases because with respect to two staff members, two and three cases were respectively closed with the imposition of one disciplinary measure.
[10] The average number of disciplinary measures imposed in the past four reporting periods is 53.

81. The workload of the Office of Human Resources Management in relation to disciplinary issues also includes representing the Secretary-General before the Dispute Tribunal on Appeals of disciplinary-related matters, including suspensions of action and challenges to more complex terminations for facts anterior. In addition, the Office has provided recommendations to the Under-Secretary-General for Management with respect to requests for placement of a staff member on administrative leave without pay, and terminations for facts anterior involving disciplinary matters in other United Nations entities, which involves a more limited review process. The Office routinely responds to requests for advice from client offices, including on more complex possible terminations for facts anterior, and participates in committees and working groups on matters relating to disciplinary matters.

82. In paragraph 40 of its resolution 71/263, the General Assembly requested the Secretary-General to provide information on the impact of the amendment to staff rule 10.4 on investigative activities in the context of his next report. The amendment to staff rule 10.4 removed the three-month limit on the initial placement of a staff member on administrative leave. The Office of Internal Oversight Services stated that, given the recent adoption of the provision, its impact on investigative activities was not clear. The Office added, however, that the removal of the time limit provided greater flexibility for investigations, although the Office's goal remains to complete investigations within three months if the staff member is on administrative leave without pay. To accommodate this, the Office has reprioritized the work on certain investigations.

B. Appeals against disciplinary measures

83. Once a completed case has resulted in the imposition of a disciplinary measure, the staff member may challenge that decision before the Dispute Tribunal. It is noted that a relatively small percentage of disciplinary measures have been appealed since 1 July 2009.[11] For the previous reporting period ending 30 June 2016, there were appeals in 17 cases, or 25 per cent.[12] During the reporting period covered by the present report,[13] there was an increase in the number of appeals compared with the numbers reported in all but two of the previous reporting periods.

[11] During the past eight years, the Dispute and Appeals Tribunals have considered the appeals of both disciplinary measures imposed prior to 1 July 2009 under the previous system of justice and measures imposed after 1 July 2009. The tables in the present section do not contain information about the appeals or outcomes of disciplinary measures imposed prior to the introduction of the new system of justice.

[12] The figure reported in the previous report (A/71/186) did not include cases that had not been appealed at the date of the submission of that report. That figure has been updated to reflect the number of cases closed during the previous reporting period that were appealed after the end of the reporting period. Accordingly, the percentage of appeals of disciplinary measures imposed during the previous reporting period is now reported as to 25 per cent, or 17 cases appealed (up from 11 cases).

[13] During the period from 1 July 2016 to 30 June 2017, of the 55 cases for which a disciplinary measure was imposed and the time period for filing an appeal had expired, staff members in 10 cases have appealed the sanction. Disciplinary measures have been imposed in 13 cases for which the time period to file an appeal had not expired as at the date of submission of the present report.

Table 3
Appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2017

Period	*Number*	*Percentage*
1 July 2016 to 30 June 2017	10	18
1 July 2015 to 30 June 2016	17	25
1 July 2014 to 30 June 2015	7	11
1 July 2013 to 30 June 2014	2	5
1 July 2012 to 30 June 2013	5	11
1 July 2011 to 30 June 2012	7	16
1 July 2010 to 30 June 2011	16	16
1 July 2009 to 30 June 2010	8	26

84. The number of Dispute Tribunal and Appeals Tribunal judgments on disciplinary sanctions in the Secretariat imposed after 1 July 2009 remains relatively small. The Tribunals continue to give considerable scrutiny to whether the facts on which disciplinary measures are based are established at the requisite standard. Considerable respect is given by the Tribunals to the Secretary-General's discretion in deciding on the proportionality of the sanction imposed. Table 4 provides information about the overall outcome of challenges to disciplinary measures imposed during the period from 1 July 2009 to date before the Dispute and Appeals Tribunals.

Table 4
Disposition of the appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2017

Disposition	*Number*	*Percentage*
Win by the respondent and cases withdrawn by staff member at the Dispute or Appeals Tribunal[a]	37	76
Settled	8	17.5
Overall loss by respondent[b]	3	6.5
Total	**48**	**100**
Staff member's appeal pending at Dispute or Appeals Tribunal or time for appeal to the Appeals Tribunal has not expired	24	

[a] This number includes cases in which: the respondent prevailed at the Dispute Tribunal and there was no appeal by the staff member to the Appeals Tribunal; the respondent prevailed at the Dispute Tribunal and at the Appeals Tribunal; the staff member prevailed at the Dispute Tribunal but the respondent prevailed at the Appeals Tribunal; or the staff member's appeal to Dispute Tribunal was withdrawn.

[b] The number includes cases in which: the respondent prevailed at the Dispute Tribunal but the staff member prevailed at the Appeals Tribunal; or the staff member prevailed at the Dispute Tribunal and there was no appeal filed by the respondent to the Appeals Tribunal.

C. Cases received by the Office of Human Resources Management

85. The tables in the present section provide information on the number and types of cases referred to the Office of Human Resources Management for possible disciplinary action during the period covered by the present report, as well as the number of cases received over the previous four reporting periods.

86. The number of cases received during the reporting period shows a slight decrease compared with the previous four periods.

Table 5
Cases received by the Office of Human Resources Management during the current and past four reporting periods

Period	*Number*
1 July 2016 to 30 June 2017	123
1 July 2015 to 30 June 2016	130
1 July 2014 to 30 June 2015	143
1 July 2013 to 30 June 2014	140
1 July 2012 to 30 June 2013	131

87. The proportion of cases concerning field staff received during the present period is 70 per cent. In the four previous reporting periods, the corresponding percentages were 68 per cent, 84 per cent, 51 per cent and 63 per cent. The percentage of cases originating in field missions is broadly in line with previous reporting periods.

Table 6
Source of cases received by the Office of Human Resources Management between 1 July 2016 and 30 June 2017

Source	*Number*	*Percentage*
Cases relating to staff based at United Nations Headquarters and offices away from Headquarters	36	30
Cases relating to field staff	87	70
Total	**123**	**100**

Table 7
Cases received between 1 July 2016 and 30 June 2017, by type of misconduct

Type of misconduct	*Number*
Abuse of authority/harassment/discrimination	16
Assault (verbal and physical)	7
Misrepresentation and false certification	42
Inappropriate or disruptive behaviour	6
Misuse of United Nations property or assets	6
Failure to honour private legal obligations	1
Retaliation	1
Sexual exploitation and abuse	4
Theft and misappropriation	22
Unauthorized outside activities and conflict of interest	10
Violation of local laws	2
Procurement irregularities	1
Others	5
Total	**123**

Note: The number of cases referred to the Office by type of misconduct varies considerably from year to year. Therefore, comparative information is not provided. For example, with regard to cases on abuse of authority, harassment and discrimination for each of the previous five reporting periods ending 30 June, the Office received the following number of referrals: 14 (2016-2017), 19 (2015-2016), 5 (2014-2015), 16 (2013-2014) and 8 (2012-2013).

V. Possible criminal behaviour

88. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, 24 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.

VI. Conclusion

89. The Secretary-General invites the General Assembly to take note of the present report.